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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ALEX MORGAN ET AL)	
<i>Plaintiffs,</i>)	Case Number: 2:19-cv-01717-RGK-AGR
)	
vs.)	NON-PARTY RICH NICHOLS' MOTION
)	TO QUASH AND FOR PROTECTION
)	Hearing Date: October 21, 2019
UNITED STATES SOCCER FEDERATION,)	
)	
<i>Defendant.</i>)	

On August 29, 2019, Counsel for Defendant United States Soccer Federation ("USSF") emailed to Rich Nichols an August 28, 2019 Subpoena to Testify at a Deposition in a Civil Action ("Subpoena"), fully incorporated by reference herein.

Pursuant to Federal Rules of Civil Procedure 26 and 45, Rich Nichols ("Nichols") respectfully requests this Court to quash the Subpoena and to protect it from Defendant USSF's request for deposition of non-party Nichols due to Defendant USSF's failure to abide by the federal rules of civil procedure, failure to abide by the local rules, and invasion of the attorney client and work product privileges.

I. SUMMARY OF ARGUMENT

This motion relates to a Subpoena issued by USSF for the deposition of Rich Nichols scheduled for October 15, 2019 at 9:00 a.m. Contrary to FRCP 26 and FRCP 45, and in

1 violation of the United States District Court, Central District of California, Civil Local Rules
2 (“Civil Local Rules” or “L.R.”) and in violation of the June 7, 2019 Order of Judge Donato in
3 3:18-cv-05215-JD, *Hope Solo v United States Soccer Federation* pending in the United States
4 District Court for the Northern District of California, Defendant USSF failed to confer with
5 Counsel for Hope Solo or with third-party deponent Rich Nichols as to the date, time, and
6 manner of a third-party subpoena deposition of Rich Nichols. In addition, the Subpoena seeks
7 confidential information subject to the attorney client and work product privileges. Defendant’s
8 attempt to invade the attorney client and work product privileges exceeds the permissible scope
9 of discovery, and creates a significant burden on Nichols without justification. Rich Nichols
10 respectfully requests that this Court quash the Subpoena in accordance with FRCP 45(d)(3), and
11 Nichols further requests that this Court issue a protective order, pursuant to FRCP 26(c),
12 prohibiting USSF from seeking such discovery, and sanction USSF for its acts and omissions.

13 14 II. RELEVANT BACKGROUND

15
16 In August, 2018, Plaintiff filed *Hope Solo v. United States Soccer Federation*, 3:18-cv-
17 05215 JD in the United States District Court for the Northern District of California, alleging
18 violations of the Equal Pay Act and Title VII.

19 In March, 2019, Plaintiffs Alex Morgan et al filed a case involving similar claims and
20 issues, *Alex Morgan et al v. United States Soccer Federation*, Case No. 2:19-cv-01717-RGK-
21 AGR, in the United States District Court for the Central District of California.

22 On June 7, 2019, Judge Donato issued an Order in *Solo v. USSF* requiring Solo and
23 USSF to “confer on ways to streamline discovery and other pretrial proceedings with respect to
24 other cases that might raise similar claims and issues”.

25 On August 29, 2019, Counsel for Defendant United States Soccer Federation (“USSF”)
26 emailed to Rich Nichols an August 28, 2019 Subpoena to Testify at a Deposition in a Civil
27 Action (“Subpoena”), attached hereto as Exhibit 1 (August 29, 2019 Email from Brian
28

1 Stolzenbach to Rich Nichols) and Exhibit 2 (August 28, 2019 “Subpoena to Testify At A
2 Deposition In A Civil Action”), both fully incorporated by reference herein.

3 4 III. ARGUMENTS AND AUTHORITIES

5 6 A. The Subpoena was not served in compliance with Federal Rule of Civil Procedure 45(b)

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8 On August 29, 2019, Counsel for Defendant USSF (Brian Stolzenbach) emailed to Rich
9 Nichols an August 28, 2019 Subpoena to Testify at a Deposition in a Civil Action.

10 Pursuant to Federal Rule of Civil Procedure 45(b), serving a subpoena requires delivering
11 a copy to the named person (FED. R. CIV. P. 45(b)(1)) and proving service requires filing with
12 the issuing court a statement showing the date and manner of service and the names of the
13 persons served. The statement must be certified by the server. See FED. R. CIV. P. 45(b)(4).

14 In addition, the L.R. 45-1 *Motions Relating to Discovery Subpoenas* states: “Except with
15 respect to motions transferred to this district pursuant to F.R.Civ.P. 45(f), L.R. 37 applies to all
16 motions relating to discovery subpoenas served on (a) parties and (b) non-parties represented by
17 counsel.”

18 L.R. 37-1 *Pre-Filing Conference of Counsel* states “Prior to the filing of any motion
19 relating to discovery pursuant to F.R.Civ.P. 26-37, counsel for the parties shall confer in a good
20 faith effort to eliminate the necessity for hearing the motion or to eliminate as many of the
21 disputes as possible. It shall be the responsibility of counsel for the moving party to arrange for
22 this conference.”

23 Currently, Rich Nichols is not represented by counsel for purposes of this non-party
24 Subpoena in the above-styled and numbered cause; however, as stated in 28 U.S.C. Section
25 1654, “[I]n all courts of the United States the parties may plead and conduct their own cases
26 personally or by counsel as, by the rules of such courts, respectively, are permitted to manage
27 and conduct causes therein.” As such, the conduct of the parties and non-parties are each bound
28 by the Federal Rules of Civil Procedure and the Local Rules.

1 Pursuant to a June 7, 2019 Order issued by Judge Donato in 3:18-cv-05215-JD, *Hope*
2 *Solo v United States Soccer Federation* pending in the United States District Court for the
3 Northern District of California, the parties (Solo and USSF) were ordered to “submit a joint
4 proposed scheduling order and to confer on ways to streamline discovery and other pretrial
5 proceedings with respect to other cases that might raise similar claims and issues” [Emphasis
6 added.] (See Dkt. 49, “June 7, 2019 Order”).

7 Although similar claims and issues are raised in *Solo v. USSF* and *Morgan et al v. USSF*,
8 and both share common Defendant USSF, Counsel for USSF (Brian Stolzenbach) disregarded
9 the Federal Rules of Civil Procedure (specifically 26, 37, and 45) and the Local Rules
10 (specifically L.R. 45-1, 37, and 37-1) and the June 7, 2019 Order, and did not confer with
11 Counsel for Solo or non-party Rich Nichols as to the time, place, or manner of any potential
12 deposition of non-party Rich Nichols, nor was there a good faith effort by Counsel for USSF
13 (Brian Stolzenbach) to eliminate any disputes that may arise based upon the Subpoena or any
14 potential deposition of non-party Rich Nichols. The Subpoena was emailed to non-party Rich
15 Nichols by Counsel for USSF (Brian Stolzenbach) on August 29, 2019, and there was no waiver
16 of service by Rich Nichols nor any agreement between Rich Nichols and USSF (Brian
17 Stolzenbach) for Rich Nichols to accept service in a manner other than the explicit requirements
18 of Federal Rule of Civil Procedure 45(b). Accordingly, the Subpoena was not served properly
19 upon Rich Nichols. In fact, the Subpoena was never served upon Rich Nichols.

20 Counsel for USSF (Brian Stolzenbach) is aware, and has been informed by Counsel for
21 Solo (Paul K. Stafford) as well as non-party Rich Nichols, that the propounding of the Subpoena
22 upon non-party Rich Nichols was improper, was in violation of federal and local rules and the
23 June 7, 2019 Order, and did not constitute service absent a waiver, consent, or agreement of Rich
24 Nichols. Counsel for Defendant USSF (Brian Stolzenbach) has disregarded this information and
25 these requirements, while unequivocally stating via emails that the October 15, 2019 deposition
26 of non-party Rich Nichols is not going forward, and that he is anticipating the deposition of Rich
27 Nichols to occur no earlier than November and possibly in February 2020; however, Counsel for
28 Defendant USSF (Brian Stolzenbach) has refused to withdraw the Subpoena. See email

1 communication chain from August 29, 2019 through September 20, 2019, attached hereto as
 2 Exhibit 3 (Email Communications: 082919-092019) and Exhibit 4 (Email Communication:
 3 092019 from USSF's Brian Stolzenbach to Rich Nichols), both fully incorporated by reference
 4 herein. In addition, on September 24, 2019, Rich Nichols also emailed and mailed a letter to
 5 USSF (Brian Stolzenbach) to confer regarding the Subpoena and any potential future deposition
 6 of non-party Rich Nichols in Morgan et al v. USSF, attached hereto as Exhibit 5 (Email
 7 Communication: 092419 from Rich Nichols to USSF's Brian Stolzenbach) and Exhibit 6
 8 (September 24, 2019 Letter from Rich Nichols to USSF's Brian Stolzenbach), both fully
 9 incorporated by reference herein. To date, Rich Nichols has received no response to the
 10 September 24, 2019 email or letter. Accordingly, giving consideration to *Mount Hope Ch. V.*
 11 *Bash Back!*, 705 F.3d 418, 425 (9th Cir. 2012) and its progeny, Counsel for Defendant USSF
 12 should be sanctioned pursuant to Federal Rule of Civil Procedure 11, for knowingly and willfully
 13 violating Federal Rules of Civil Procedure 37 and 45, as well as L.R. 45-1, L.R. 37-1 and L.R.
 14 37-4 Cooperation of Counsel – Sanctions, which states: "The failure of any counsel to comply
 15 with or cooperate in the foregoing procedures may result in the imposition of sanctions", and the
 16 Subpoena should be stuck and withdrawn, and costs and fees assigned and awarded against
 17 Defendant USSF.

18
 19 **B. The Subpoena seeks irrelevant and privileged information and imposes an undue**
 20 **burden on non-party Rich Nichols**

21
 22 "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any
 23 party's claim or defense." FED. R. CIV. P. 26(b). This scope of discovery applies equally to
 24 subpoenas served on a non-party pursuant to Rule 45, and Federal Rule of Civil Procedure
 25 45(d)(3)(A) states that "the court for the district where compliance is required must quash or
 26 modify a subpoena that . . . subjects a person to undue burden." See FED. R. CIV. P.
 27 45(d)(3)(A)(iv).

1 Courts have quashed subpoenas such as this Subpoena where the issuing party (such as
 2 USSF in this matter) fails to explain “what non-privileged, relevant information [the witness]
 3 could offer,” *Unigene Labs., Inc. v. Apotex, Inc.*, No. C 07-80218 SI, 2007 U.S. Dist. LEXIS
 4 78410, at *9 (N.D. Cal. Oct. 10, 2007) (granting defendants’ motion to quash subpoena). See
 5 *Trunk v. City of San Diego*, No. 06 CV 1597 LAB (WMc), 2007 U.S. Dist. LEXIS 67766, at *23
 6 (S.D. Cal. Sep. 13, 2007) (quashing subpoena where the issuing party could at most perhaps
 7 “craft a few relevant and meaningful deposition questions that did not run afoul of” the attorney
 8 client privilege to obtain an “extremely limited amount of historical information”), objections
 9 overruled, 06cv1728-LAB (WMc), 2007 U.S. Dist. LEXIS 75787 (S.D. Cal. Oct. 10, 2007). See
 10 also *Hurry v. Fin. Indus. Regulatory Auth.*, No. 17-mc-80026-LB, 2017 U.S. Dist. LEXIS 108005,
 11 at *4 (N.D. Cal. Apr. 7, 2017) (quashing subpoena and “reject[ing] the plaintiffs’ argument that
 12 the proper procedure is to require [deposition of third party] and require serial objections to
 13 questions on the pound of privilege.”).

14 More specifically, in *Lemberg Law LLC v. Hussin*, No. 16-mc-80066-JCS, 2016 U.S.
 15 Dist. LEXIS 76772 (N.D. Cal. June 13, 2016), the court rejected a similar argument as the one
 16 Defendant USSF makes here – that attorney-client privilege can be asserted only with respect to
 17 specific documents or deposition questions — and held that such an approach would “virtually
 18 nullify Rule 45(d)(3)(A)(iii), which requires the Court to quash a subpoena that requires
 19 disclosure of privileged or other protected matter, and would be inconsistent with cases where
 20 courts have quashed deposition subpoenas that appear to be targeted at privileged subject
 21 matter.” *Id.* (emphasis in original) (internal citations and quotation marks omitted).

22 Likewise, under Federal Rule of Civil Procedure 26(c), the Court may, for good cause,
 23 issue an order to protect a person from annoyance, embarrassment, oppression, or undue burden
 24 or expense. See FED. R. CIV. P. 26(c)(1). Pursuant to Federal Rule of Civil Procedure
 25 26(c)(1)(D), “A party or any person from whom discovery is sought may move for a protective
 26 order in the court where the action is pending – or as an alternative on matters relating to a
 27 deposition” to protect a party or person from annoyance, embarrassment, oppression, or undue
 28 burden or expense, including “forbidding inquiry into certain matters, or limiting the scope of

1 disclosure or discovery to certain matters”. See FED. R. CIV. P. 26(c)(1)(D). Accordingly, non-
2 party Rich Nichols seeks a motion to quash the Subpoena, and moves for protection from the
3 Subpoena’s improper request for non-party Rich Nichols to disclose information and
4 communications that are protected by the attorney-client and work-product privileges.

5 Pursuant to Federal Rule of Civil Procedure 45(d), A party or attorney responsible for
6 issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or
7 expense on a person subject to the subpoena. The court for the district where compliance is
8 required must enforce this duty and impose an appropriate sanction—which may include lost
9 earnings and reasonable attorney’s fees—on a party or attorney who fails to comply. See FED.
10 R. CIV. P. 45(d). The Subpoena seeks confidential information subject to the attorney client and
11 work product privileges. Defendant’s attempt to invade the attorney client and work product
12 privileges exceeds the permissible scope of discovery, and creates a significant burden on
13 Nichols without justification. As stated in Federal Rule of Civil Procedure 45(d)(3)(iii), on
14 timely motion, the court for the district where compliance is required must quash or modify a
15 subpoena that requires disclosure of privileged or other protected matter, if no exception or
16 waiver applies or subjects a person to undue burden.

17 In issuance of the Subpoena, Counsel for Defendant USSF (Brian Stolzenbach) failed to
18 take reasonable steps to avoid imposing undue burden or expense on non-party Rich Nichols.
19 Accordingly, the Court should compel compliance with FED. R. CIV. P. 45(d), enforce the duty,
20 and impose sanctions upon Counsel for Plaintiff for failure to comply with FED. R. CIV. P.
21 45(d), which should include awarding of non-party Rich Nichols’ costs and any of Rich Nichols’
22 reasonable attorney’s fees for retained counsel in preparing, filing, and pursuing this Motion to
23 Quash and for Protection. In addition, and in accordance with *Legal Voice v. Stormans Inc.*, 738
24 F.3d 1178, 1182 (9th Cir. 2013) (requires the District Court to consider whether the costs of
25 compliance are “significant.”) and its progeny, non-party Rich Nichols requests that this Court
26 shift any costs of compliance with the Subpoena (or any potential future deposition of non-party
27 Rich Nichols) to USSF.
28

CONCLUSION

The Subpoena issued by USSF for the deposition of non-party Rich Nichols scheduled for October 15, 2019 at 9:00a.m. is contrary to FRCP 26 and FRCP 45, and is in violation of the Local Rules, and is in violation of the June 7, 2019 Order of Judge Donato in Solo v. USSF. Counsel for Defendant USSF (Brian Stolzenbach) failed to confer with Counsel for Solo or third-party deponent Rich Nichols as to the date, time, and manner of a third-party subpoena deposition of Rich Nichols. In addition, the Subpoena seeks confidential information subject to the attorney client and work product privileges. Defendant's attempt to invade the attorney client and work product privileges exceeds the permissible scope of discovery, and creates a significant burden on Nichols without justification. The Court should quash the Subpoena and enter a protective order prohibiting USSF from seeking such discovery. Accordingly, non-party Rich Nichols respectfully requests and prays that this Court quash the Subpoena in accordance with FRCP 45(d)(3). Rich Nichols further requests that this Court issue a protective order, pursuant to FRCP 26(c) as to any privileged and confidential documentation or information. Rich Nichols seeks sanctions against Counsel for USSF (Brian Stolzenbach) pursuant to Rule 11 and L.R. 37-4, requests that the Subpoena be struck and withdrawn, and seeks any other relief to which Rich Nichols may be justly entitled at law or equity.

Dated: October 3, 2019

Respectfully submitted,



/s/ Rich Nichols

RICH NICHOLS, ESQ.
PRO SE NON-PARTY